

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF
ATTORNEY GENERAL

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Chief Deputy

Protecting Utah • Protecting You

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Chief Deputy

May 19, 2011

Brian T. Moynihan
President, Bank of America
100 North Tryon St.
Charlotte, NC 28255

Re: ReconTrust Co., N.A.

Dear Mr. Moynihan:

As Attorney General for the State of Utah, I am statutorily charged with enforcing Utah's laws in the State of Utah. In that capacity I have determined that ReconTrust, N.A., is not in compliance with Utah Code §§ 57-1-21 and 57-1-23 when conducting real estate foreclosures in the State of Utah.

Utah Code §§ 57-1-21(3) and 57-1-23 provide that the only valid trustees of trust deeds with the "power of sale" are those who are either members of the Utah State Bar or title insurance companies. Since ReconTrust is neither of these, all real estate foreclosures conducted by ReconTrust in the State of Utah are not in compliance with Utah's statutes, and are hence illegal.

These code sections were passed by the Utah Legislature in 2001 and 2004 for the specific purpose of protecting Utah citizens in their homes when they are faced with the potential of a real estate foreclosure. The constitutionality of this legislation was ultimately upheld by the United States 10th Circuit Court of Appeals in *Shurtleff v. Kleinsmith*, 571 F.3d 1033 (2009).

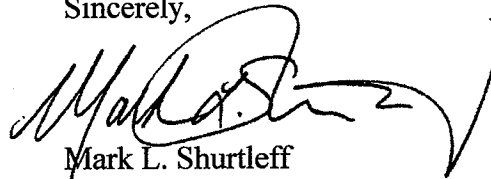
It is my understanding that ReconTrust claims that as a national bank it is exempt from following Utah law in exercising its fiduciary powers. This office adamantly disagrees with that position on the basis that the section of the National Bank Act granting national banks authority to act in a fiduciary capacity specifically states that such authority shall be exercised only "when not in contravention of State or local law." 12 U.S.C. 92a(a) and (b).

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Thus, ReconTrust's exercise of fiduciary powers in the State of Utah is a violation not only of State law, but also applicable federal law.

The purpose of this letter is to give you notice that the Utah Attorney General's office intends to enforce Utah's statutes against those conducting business in Utah, and that includes enforcement of the real estate trustee qualification statute. I would appreciate a response to this letter from you within 30 days of the date of this letter informing me of how you intend to proceed. I am willing to discuss this issue with you or your attorneys if you like.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark L. Shurtleff", with a large, sweeping flourish extending to the right.

Mark L. Shurtleff
Utah Attorney General

MLS/se